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In the Supreme Court of the United States

HENRY MONTGOMERY,
Petitioner,
v.
STATE OF LOUISIANA,
Respondent.

On Writ of Certiorari to the
Supreme Court of Louisiana

BRIEF OF THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION AND OTHER PROSECUTORS' ASSOCIATIONS AS *AMICI CURIAE* IN SUPPORT OF LOUISIANA

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INTEREST OF *AMICI CURIAE*[*]

The *amici* filing this brief are four law-enforcement organizations with experience that is particularly relevant to the question before the Court. The first of these groups, the National District Attorneys Association, is the oldest and largest association of state and local prosecutors, victims' rights advocates, investigators, and other law-enforcement personnel in the United States. The second, the National Association of Prosecutor Coordinators, is an organization of the agencies that provide continuing legal training, advocacy services, and technical experience to prosecutors throughout the country. The third, the Louisiana District Attorneys Association, is the association of prosecutors from the State from which this case arises. The fourth, the Missouri Association of Prosecuting Attorneys, is a similar organization from Missouri.

Although the *amici*'s members have a duty to represent their government zealously, they also are joint partners with the courts in the pursuit of justice. Their practical experience provides important insight in assessing how best to achieve that shared goal, and their perspective should be particularly valuable in the case at hand. State postconviction proceedings, particularly those in trial courts, are quite often handled not by the state attorney gen-

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[*] No counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the NDAA or its counsel made a monetary contribution to the brief's preparation or submission. The parties have filed blanket consent waivers with the Court consenting to the filing of all *amicus* briefs.

eral's offices but local district attorneys. Accordingly, in the years since *Miller*, local prosecutors have frequently been called upon to represent the government when offenders have filed petitions seeking new sentencing hearings on postconviction review. Many of these prosecutors have litigated the question whether *Miller* should be retroactive in their particular states, and many have represented the government in *Miller* hearings in states that have applied the rule retroactively. *See, e.g.*, ABA *Amicus* Br. at 29 & nn.32-33 (collecting cases from states that have required *Miller*'s retroactive application). Some of those local prosecutors—from states such as California, Illinois, Iowa, Louisiana, and Washington—reported their experiences to counsel for the purposes of this brief.

As described below, common themes emerged from these discussions, and many of these prosecutors encountered parallel difficulties in litigating these matters. The NDAA, NAPC, LDAA, and MAPA are filing this brief to relay those themes and difficulties to the Court.

SUMMARY OF ARGUMENT

Prosecutors' on-the-ground experience shows that *Miller* established a rule that is fundamentally distinct from any rule deemed to be "substantive" under *Teague*. For the changes in the law this Court previously has deemed substantive, few logistical difficulties have followed from their retroactive application. In those cases, postconviction courts simply have had to vacate certain convictions or reduce certain sentences to the maximum sentence authorized by law. *Miller* is different. It requires a fact-intensive hearing and a judgment call by the sentencing judge. Prosecutors have found that for prosecutions first commenced after this Court decided *Miller*, these hearings have worked well. That has not been true when courts have proceeded with *Miller* hearings in postconviction cases, years after the defendant was first tried. Contrary to the suggestions by the *amici* who support Montgomery, the postconviction hearings pose substantial difficulties to all parties, create significant risks of inaccurate results, and undermine finality in a way that is contrary to the values underlying this Court's precedents.

The record at postconviction *Miller* hearings has been a particular problem. In new prosecutions, both sides have full incentives to develop the record relevant to sentencing, and both sides have the capacity to do so, given that the crime occurred relatively recently and the defendant is still young. But in postconviction proceedings, neither side may have had an incentive to develop that record, and it is difficult to assemble after the fact. Because many years often will have passed since the offender's crime, the judge typically will be different from the judge who presid-

ed over the defendant's trial, and thus unable to utilize trial experience to help make the appropriate sentencing determination. Offenders may have an incentive to manufacture false arguments that, due to the passage of time, prosecutors cannot easily rebut. Advocacy groups also may engage in public-relations campaigns that fail to convey full and accurate facts, thus undermining public confidence when judges conclude that, in light of all the circumstances, the offender's original sentence of life without parole remains appropriate.

Prosecutors' experience also suggests, and the *amici* who have submitted briefs on behalf of Montgomery have confirmed, that retroactive application of the *Miller* rule is not at all about ensuring that the same rules apply to offenders in both new prosecutions and postconviction review. The *Miller* hearing at new prosecutions focuses on the defendant's characteristics at the time of the crime and the trial. Offenders who seek retroactive application of *Miller* almost always ask the court to make a different inquiry. They ask courts to focus on what has happened in the years *after* they committed their crime, while they were in prison. That disparity is a problem in and of itself, and prosecutors have had substantial concerns that offenders have manufactured false arguments about their purported rehabilitation.

Prosecutors have witnessed the uniquely severe toll postconviction *Miller* hearings have had on victims' families. In new prosecutions, families understand at the outset that, upon a finding of guilt, the judge will be choosing between a sentence of life without parole and one that involves some possibility of release. They also know that their participation in

the proceedings may be essential. But in postconviction cases, victims' families already have been told that the court had rendered a final judgment. They have been told that the defendant will never be released. They have been told that they can move on with their lives. It is difficult to overstate the pain victims' families have suffered when they have learned that these cases, and their emotional wounds, may be reopened.

Miller's retroactive application thus implicates numerous logistical difficulties that do not normally attend to the retroactive application of rules this Court previously has deemed "substantive" under *Teague*. Their presence suggests that the *Miller* rule does not fall within that category.

ARGUMENT

Practical considerations—and, critically for present purposes, practical experiences of lawyers who represent the government—should play an important role in this Court's determination whether *Miller* set out a substantive rule that States must apply retroactively to cases on habeas review. In paradigm cases involving substantive changes in the law, the new rule's application on postconviction will not require a difficult inquiry or a complicated proceeding. When this Court adopts a new substantive rule declaring certain "conduct beyond the power of the criminal law-making authority to proscribe," the postconviction court's mandate will be clear: the court simply must vacate any conviction based on that conduct. *Teague v. Lane*, 489 U.S. 288, 307 (1989) (internal quotation marks omitted). Likewise, when this Court has adopted new substantive rules "placing a certain class of individuals beyond the State's power to punish by death," the postconviction court's mandate has, in practice, also been clear. *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989). The court in that instance must reduce the offender's sentence to the highest available punishment provided by law. *See, e.g.*, *Little v. Dretke*, 407 F. Supp. 2d 819, 824 (W.D. Tex. 2005) (retroactively applying *Roper v. Simmons*, 543 U.S. 551 (2005)). In most of those cases, application of the new rule is so straightforward that the postconviction court could, in theory, give the rule retroactive effect without even conducting a hearing.

As prosecutors throughout the country have learned in recent years, the process is dramatically different when *Miller* is applied retroactively. The

entire point of *Miller* was to require a hearing. And whereas those hearings have generally worked well in *new* prosecutions commenced *after* this Court decided *Miller*, they are fraught with logistical difficulties in postconviction proceedings. These difficulties underscore the reality that, as a functional matter, *Miller* is categorically different from any rule this Court previously has found to be substantive under *Teague*.

Perhaps the best way to understand those difficulties is to first consider the context in which prosecutors say *Miller* hearings have worked well—prosecutions commenced for the first time only after *Miller*, such that the sentencing hearing followed promptly after the jury's finding of guilt. Both the prosecution and defense are aware, throughout trial, that if the defendant is convicted a *Miller* hearing will follow. Both sides thus have every incentive to fully develop a contemporaneous record about the aggravating and mitigating circumstances that surround the defendant and the crime he is alleged to have committed. And both sides have the actual capacity to develop that record. Witnesses can easily be summoned to the trial. The relevant documents are available. The evidence is fresh. The defendants are still juveniles—or, at least, not far removed from their juvenile years. Experts can develop reliable opinions about the extent to which their youth affected their culpability. The same judge who presided over the trial and heard the evidence of the defendants' guilt can use that experience to determine which sentence, as between life without parole or life with the possibility of parole, is the most appropriate

punishment for the defendant, his crime, and the pain he has inflicted on his victims.

Virtually none of these things may be true of *Miller* hearings on postconviction. The actual trial of the defendant may have happened long before. The government and defendants may have had no incentive at that trial to develop a contemporaneous record concerning the aggravating and mitigating circumstances. Witnesses may have moved or have died. Relevant documents and evidence may be difficult to find. The prosecutor who brought the original case, the attorney who defended it, the judge who presided over it—each of those persons may be far out of reach. The defendants themselves may have long been adults, and neither side may have the capacity to gauge how those defendants' youth, at the time of their crime years before, affected their ability to know right from wrong.

These difficulties have not made it impossible for prosecutors to persuade judges, in appropriate cases, to re-impose the sentence of life without parole. But whereas *Miller* hearings conducted immediately after a trial have led to a process that many prosecutors have deemed to be fair and reliable, the same cannot be said of *Miller* hearings on postconviction review. Many prosecutors thus would take issue with the assertion, found in the *amicus* brief filed on Montgomery's behalf by a group of former juvenile-court judges, that numerous states have "successfully applied" *Miller* retroactively. Former Judges' *Amicus* Br. 7. Although those former judges' service on the juvenile courts deserves the deepest respect, these former judges do not appear to have presided over any *Miller* hearings in adult postconviction pro-

ceedings. It also bears emphasis that the same group of judges appears to have taken the position that, as a categorical matter, "*no*" person convicted of murder as a juvenile should receive a life-without-parole sentence. *Id.* at 22. That is not the *Miller* rule.

The experience of prosecutors who actually have litigated *Miller* hearings on postconviction—and who are seeking life-without-parole sentences in appropriate cases, as *Miller* envisions they may do—is different. As explained below, the problems prosecutors have experienced in those hearings underscore the fundamental differences between *Miller* and the rules this Court has deemed to be substantive. They highlight why *Miller* is not a rule that, in the interests of justice, demands application to cases that became final years ago.

A. The record in postconviction *Miller* hearings creates significant problems.

Many prosecutors would take exception to the assertion, advanced by a number of Montgomery's *amici*, that postconviction *Miller* hearings promote sentencing accuracy. *See, e.g.*, ACLU *Amicus* Br. 3-5; Prof. Berman *Amicus* Br. 3, 8. It is reasonable enough to say that a *Miller* hearing conducted immediately after trial can help the judge account for the offender's culpability. But the same is not true of *Miller* hearings on postconviction, where the record almost always contains critical gaps.

A considerable portion of the problem arises because at the time these offenders were tried, *Miller* was not on the books. For many of the offenders, life without parole was the mandatory-minimum sentence at that time. The prosecutors and defense lawyers in those cases may have had no incentive to de-

velop a record with evidence that is probative on various sentencing factors, including but not limited to the factors *Miller* emphasizes relating to an offender's youth. This reality means that postconviction *Miller* hearings implicate one of the core concerns that has animated retroactivity doctrine over the years: "unusual difficulties" can "arise in identifying and resolving constitutional issues in cases long final and, if a constitutional claim prevails, in conducting a retrial." Richard H. Fallon, Jr. & Daniel J. Meltzer, *New Law, Non-Retroactivity, and Constitutional Remedies*, 104 HARV. L. REV. 1731, 1815 (1991). Prosecutors on postconviction thus often must make their case without the benefit of evidence from the first trial, and may be developing the record on these points for the first time. Montgomery's *amici* who dismiss the burden on States from postconviction hearings as "minimal" are either unaware of or ignoring this reality. *E.g.*, ABA *Amicus* Br. 25, 28, 31.

That reality is a particular problem in *Miller* hearings because the various factors this Court deemed relevant to the sentencing inquiry require backwards-looking factual determinations. The court may consider evidence relating to the defendant's age, maturity, and life circumstances at the time of offense. The parties ordinarily would present this evidence through child-protection documents, medical records, school records, and trial records. But these records may be largely unavailable years after the fact. These are the sorts of "stale facts" that Justice Harlan rightly said can render new proceedings on habeas inherently unreliable. *Mackey v. United States*, 401 U.S. 667, 691 (1971) (Harlan, J., concurring in the judgment in part and dissenting in part).

In light of the "[p]assage of time, erosion of memory, and dispersion of witnesses" that this Court has noted may attend any postconviction proceeding, developing the appropriate record for the *Miller* inquiry can be extraordinarily hard. *Engle v. Isaac*, 456 U.S. 107, 128 (1982). Even Montgomery's *amici* concede that this Court has recognized that as a result of these considerations, "retrying an individual on collateral review unduly risks obtaining a result less reliable than" the original trial. ACLU *Amicus* Br. 16. Yet those *amici* offer no persuasive reason why these concerns "do not extend to the original sentencing." Prof. Berman *Amicus* Br. 9. To the contrary, on-the-ground experience shows that these concerns can be present in full force. During one postconviction *Miller* hearing in Iowa, the judge noted the "difficulties" the parties had faced "in preparing," especially due to a lack of "access [to] documents" and witnesses. Transcript of Resentencing at 87, *Iowa v. Hardin*, Criminal No. FECR196077 (Iowa D. Ct. for Scott County Apr. 15-16, 2014). Juvenile records, in particular, are especially difficult to come by. Many of those records predate the digital age. Paper records from schools or juvenile court may have been destroyed. Even when they have not been, they sometimes have been incomplete. As the judge in the same Iowa proceeding observed, several of the entries in the juvenile record there "simply say little more than 'handled in juvenile court' or there is simply a carat in place of a disposition with sort of a general comment underneath a number of entries." *Id.* at 27. The judge understandably viewed those records as "extremely problematic," and declined to give them "any weight." *Id.*

These problems are compounded by the fact that the judge in a substantial number of postconviction *Miller* hearings will not be the judge who presided at trial. The law does not necessarily require that the same judge who presides at trial also hand down the sentence. But nearly every jurisdiction has made this the strongly preferred practice. *See, e.g.*, *People v. Jacobs*, 67 Cal. Rptr. 315, 622 (Cal Ct. App. 2007); *People v. Gomez*, 425 N.Y.S.2d 776, 777-78 (Cnty. Ct. 1980). These jurisdictions have set that presumption for obvious reasons. Sentencing is an art, and an important component consists of the judge's observations from the trial. The judge at a postconviction *Miller* hearing, in contrast, will need to make due with a transcript and the cold record.

The passage of time also can make it more difficult for prosecutors to rebut certain assertions from the defense. As this Court has noted, in any new trial ordered by a postconviction court, offenders may make allegations that are "false in fact," but the State "may be unable to refute them because of the unavailability of records and of the testimony of responsible officials and participants in the trial." *Peyton v. Rowe*, 391 U.S. 54, 62 (1968) (internal quotation marks omitted). One prosecutor has pointed to a specific incident along these lines in a postconviction *Miller* hearing. The offender made numerous new allegations that he had been abused as a child. He claimed that his grandfather was a drug user whose alleged favorite form of punishment was to point his shotgun at the offender. By the time of the hearing—18 years after the crime—the grandfather had died. The known documents made no mention of the alleged abusive relationship. The original prosecutor

was unavailable as a resource. Any potential witnesses were dead, had moved, or otherwise were unavailable. The only way the State could rebut this claim was to point to the absence of anything in the record or in subsequent records obtained from the prison. Some offenders no doubt suffered serious problems in their childhood, but prosecutors—and critically, the courts—have little means of distinguishing legitimate claims from false ones when offenders make them for the first time decades later.

The potential for offenders to raise newfound and false claims of diminished culpability also has led to, in the views of some prosecutors, advocacy groups wrongly trying to use these cases to undermine the public's confidence in the courts. Whereas prosecutors must weigh all the evidence in making their sentencing recommendations, advocacy groups may sometimes conduct media campaigns in which they fail to give the public all the relevant information. The paradigmatic example arose when Adolfo Davis, age 38, applied for resentencing shortly after *Miller*. The press widely reported on his theory that he was only the lookout during a home invasion. *See* Annie Sweeney, *'I'm Just Praying' for 2nd Chance, Convict Says in Juvenile Resentencing*, CHICAGO TRIBUNE (Apr. 14, 2015), *available at* http://www.chicagotribune.com/news/local/breaking/ct-adolfo-davis-resentencing-hearing-met-0414-20150414-story.html. The courtroom was packed during his hearing, and the media reported that he was "not the killer" as if that was an undisputed fact. Trymaine Lee, *Young and in Prison, With No Chance of Parole*, MSNBC.COM (Jan. 16, 2014), http://www.msnbc.com/msnbc/young-and-jail-no-chance-parole. But prosecu-

tors developed a compelling case that Davis's theory was a sham. After weighing all that evidence—which included ballistics evidence and witness testimony—the judge resentenced Davis to life without parole. Advocates then responded by criticizing the judge in the press. A former judge who testified for Davis told reporters "she embarrasses my profession" and called the hearing a "mockery." ABC 7 Chicago News, *Convicted Murderer Adolfo Davis Resentenced to Life in Prison* (May 4, 2015), *available at* http://abc7chicago.com/news/convicted-murderer-adolfo-davis-resentenced-to-life-in-prison/695272/.

On-the-ground experience thus runs contrary to the ABA's and ACLU's suggestions that, in theory, "[t]he states' interest in finality, which underpins the general rule of non-retroactivity, is particularly weak here." ABA *Amicus* Br. 24; *accord* ACLU *Amicus* Br. 11. Each of the aforementioned considerations—the lack of a contemporaneously developed record, the potential for manipulation by offenders eager to secure release at any cost, and unfair criticisms of judges charged with making difficult sentencing determinations decades after the fact—make retroactive application of *Miller* strike at the heart of the finality interests animating this Court's jurisprudence. And contrary to the United States' suggestion, none of these practical considerations is necessarily present when a court retroactively applies new substantive rules. *See* U.S. *Amicus* Br. 22. Courts in most States could apply *Roper* and *Graham*, the two examples the United States cites, by simply reducing the offender's sentence to the highest sentence authorized by the Eighth Amendment. Practical diffi-

culties are uniquely present, and uniquely unavoidable, in the *Miller* context.

B. Postconviction *Miller* hearings are problematic because they involve an inquiry that is fundamentally different from the inquiry at ordinary *Miller* hearings.

Prosecutors' on-the-ground experience also belies the argument, advanced by one of Montgomery's *amici*, that retroactive application of *Miller* would serve the interests of "'evenhanded justice'" and the desire to "'treat similarly situated defendants alike.'" Northwestern Ctr. *Amicus* Br. 33 (quoting *Teague*, 489 U.S. at 300, 315). In actuality, the inquiry courts are conducting at postconviction *Miller* hearings is dramatically different from the one they are conducting at *Miller* hearings that occur directly after the trial.

As Michigan and the other State *amici* have observed, *Miller* hearings on postconviction suffer from a pronounced square-peg, round-hole problem. *See* States' *Amicus* Br. 11. *Miller* itself requires the sentencing court to consider the psychological profile of the offender at the time of the crime. Prosecutors have found that analysis to be straightforward in new prosecutions commenced after *Miller*, for in those cases the offender is either still a juvenile or not far removed from his juvenile years. In the postconviction context, that time often is long past. The court no longer can easily assess the offender's mindset at the time he committed the crime. As a result, lawyers for offenders have expressly advocated that the courts consider not simply evidence about the offender's mindset at the time of the crime, but also his or her experience in the years since the crime. *See*

ACLU *Amicus* Br. 17; Prof. Berman *Amicus* Br. 3, 8; *cf.* Montgomery Br. 7 (taking note of Petitioner's activities in prison). And prosecutors who have been involved in postconviction *Miller* hearings have found that judges inevitably have considered evidence about the offender's mindset after his juvenile years.

Those realities underscore that these offenders are not truly seeking to benefit equally from the *Miller* rule. As a practical matter, these offenders are seeking to benefit from a rule that takes into account not simply the mitigating circumstances associated with their youth, but also any mitigating circumstances that have arisen in the years, or even decades, since the crime. That dynamic provides yet another distinction between *Miller* and the rules this Court previously has deemed substantive. Retroactively applying a rule making certain conduct beyond the State's power to punish, or making certain conduct not subject to the death penalty, simply means equal treatment for offenders on postconviction. Applying the *Miller* rule to postconviction proceedings, in contrast, entails what, to paraphrase what the ACLU has said, could be a "distinct advantage" for the postconviction petitioners. ACLU *Amicus* Br. 17.

The disconnect between the *Miller* rule's normal application and its application on postconviction has led to yet more logistical difficulties. When defendants and prosecutors have introduced evidence relating to the offender's conduct while in prison, judges have expressed concern over the lack of "guidance as to what [they] are to consider post-conviction." Transcript of Resentencing at 34, *Iowa v. Hardin*, Criminal No. FECR196077 (Iowa D. Ct. for Scott County

Apr. 15-16, 2014). One prosecutor worries that in certain cases, offenders contrived claims of rehabilitation. Other prosecutors have relayed examples of times when offenders claimed to have made significant progress from their youth, but the State had no way to verify that the mental health and behavioral issues existed in the first place.

C. Postconviction *Miller* hearings impose unwarranted costs on victims.

More than anything else, prosecutors are troubled by the toll they have seen postconviction *Miller* hearings impose on the victims' families. Society's solicitude for victims has only increased in recent times, and these persons are an integral part of any *Miller* hearing. *Cf.* 18 U.S.C. §3771(a)(4) (creating a federal right for victims to speak in relevant court proceedings). In new prosecutions that have commenced after *Miller* was decided, government attorneys have been able to work effectively with victims' families, who provide appropriate and relevant testimony to the sentencing judge. Even before the jury has rendered a verdict in those cases, these persons understand that, if the defendant is found guilty, the judge will be choosing between life without parole and life with the possibility of parole. Although many of the family members hope that the defendant will receive the higher sentence, they can prepare both for the reality that they may need to appear at the hearing and the possibility of a sentence that involves the possibility of parole.

On postconviction, victims and family members stand in dramatically different shoes. The court system previously has told them that the person who murdered their loved ones will never leave prison.

Victims' families have understood that the matter is completed, and many have endeavored to move on with their lives. The threat of retroactive application of *Miller* means not only that the offender may be released from prison—something that is intensely traumatic to these families—but also that they will once again be injected into the process, even at the *Miller* hearing that will determine whether the offender will be parole-eligible.

It thus should not be surprising that some prosecutors who have been involved in postconviction *Miller* hearings have reported that the process has been intensely agonizing for these victims. More than one prosecutor has compared it to the reopening of a "wound." Another prosecutor recounted his experience visiting the home of the family members of a victim to inform them that their loved one's murderer had petitioned for resentencing. The family members burst into tears; one became hysterical. The offender's sentence had been final for decades, and their world was turned upside down at the thought of revisiting the pain of their loss. In another case, a family member refused to participate, unwilling to revisit the horrors of the past. Still others have moved away, died, or are otherwise unavailable. Although these victims are saved from the emotional toll of testifying, the courts have been deprived of an essential voice in the sentencing process. Only by ignoring these victims can *amici* like the ABA dismiss the finality concerns at issue here as "minimal." ABA *Amicus* Br. 25, 31.

This factor, too, distinguishes *Miller* from the rules that this Court previously has deemed to be substantive for the purposes of *Teague*. When the

Court declares that the State simply has no power to criminalize certain conduct, the application of that rule will have very little impact on victims. Indeed, substantive rules of that variety quite often involve crimes that have no victims at all. *See, e.g.*, *Lawrence v. Texas*, 539 U.S. 558 (2003) (sodomy); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (use of contraceptives). Likewise, although the application of a rule prohibiting the death penalty with respect to certain offenders may upset victims' expectations, the impact of those rules on victims often has been mitigated because courts have simply reduced defendants' sentences to life without parole. Because victims have not been forced to be an integral part of those processes, there has been "little societal interest in permitting the criminal process to rest" with those sentences in place. *Mackey*, 401 U.S. at 693 (Harlan, J., concurring in the judgment in part and dissenting in part).

The same is not true of *Miller*. As other *amicus* submissions suggest, there are doubtless some victims and family members who believe that the person who killed their loved one should have a chance at parole. *See* Brief *Amicus Curiae* of Certain Family Members of Victims Killed by Youths 1-3. But those submissions also suggest that those victims have other avenues to achieve that result—such as appeals to executive clemency in their particular cases—that do not involve imposing *Miller* retroactively on other victims who do not share those views. *See id.* at 30 (noting one instance in which a victim successfully petitioned for a reduction of her offender's sentence). As is true of the other realities associated with postconviction *Miller* hearings, the costs they

impose in this respect point decidedly against any conclusion that the rule is "substantive" and decidedly against its retroactive application to cases on habeas review.

CONCLUSION

This Court should affirm the judgment of the Supreme Court of Louisiana.

Respectfully submitted,

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